

General Information Letter: A trust is an Illinois resident if its grantor was an Illinois resident at the time the trust became irrevocable.

November 2, 2006

Dear:

This is in response to your letter dated September 25, 2006 in which you request a letter ruling. The nature of your letter and the information you have provided requires that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c) at www.ILtax.com.

Your letter states as follows:

I am a CPA practicing in CITY, Arizona. I am writing to inquire if a particular trust would be treated as an Illinois resident. Based on my reading of the IL-1041 instructions (R-12/05), page 3 of 8, "Definitions to help you complete your Form IL-1041"; I do not believe the trust is an Illinois resident.

The decedent was a resident of Arizona. During her lifetime, she formed a revocable living trust. At her death, her trust became irrevocable. Her trust provided for the formation of sub-trusts. One of the sub-trusts is a generation skipping transfer trust with an Illinois resident as the trustee and the beneficiary. The trust has no Illinois property.

Based on my reading of the definitions of resident, I do not believe that this trust would be a resident trust. Accordingly, there would be no requirement to file an IL-1041 for this Trust. The only income that would be reported to Illinois would be the income that flows through to the beneficiary of this trust. This income would be reported to the beneficiary on a federal Schedule K-1. He would include it on his Illinois personal income tax return.

Please confirm my interpretation of these rules as they apply to this particular trust in writing.

RULING

Section 502(a) of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/101 *et seq.*) sets forth the requirements for filing Illinois income tax returns. That section states in pertinent part as follows:

- (a) In general. A return with respect to the taxes imposed by this Act shall be made by every person for any taxable year:
 - (1) For which such person is liable for a tax imposed by this Act, or
 - (2) In the case of a resident ..., for which such person is required to make a federal income tax return, regardless of whether such person is liable for a tax imposed by this Act.

Under this Section, a return is required of every person with "Illinois net income" as defined under Section 202 of the IITA, as well as certain Illinois residents required to file a federal income tax return.

IITA Section 502(b)(3) provides that in the case of an estate or trust, income tax returns shall be made by the fiduciary.

The term "resident" is defined at IITA Section 1501(a)(20), subparagraphs (C) and (D), to include the following trusts:

- (C) A trust created by a will of a decedent who at his death was domiciled in this State; and
- (D) An irrevocable trust, the grantor of which was domiciled in this State at the time the trust became irrevocable. For purposes of this subparagraph, a trust shall be considered irrevocable to the extent that the grantor is not treated as the owner thereof under Sections 671 through 678 of the Internal Revenue Code.

The term "nonresident" means any person other than a resident. (IITA § 1501(a)(14))

IITA Section 202 defines Illinois net income as that portion of the taxpayer's base income (as defined in IITA Section 203) that is allocable to Illinois under the provisions of Article 3 of the IITA, less certain deductions. In the case of a trust, base income under Section 203 starts with the trust's federal taxable income. Illinois base income is then derived by adjusting federal taxable income to take into account certain statutory addition and subtraction modifications. (IITA § 203(c))

The provisions of Article 3 of the IITA provide the allocation and apportionment rules applicable to trusts. (IITA § 306) Section 301(a) of the Act states that in the case of a resident, all the items of income and deduction taken into account in computing base income shall be allocated to Illinois. In the case of a nonresident, whether certain income and deduction items must be allocated to Illinois depends initially on whether such items constitute nonbusiness income or business income. IITA Sections 301(c)(2) and 303 provide allocation rules applicable to various types of nonbusiness income items. Section 304 provides apportionment rules for business income.

In this case, assuming that the decedent was not domiciled in Illinois at the time the trust became irrevocable, the trust is a nonresident under IITA section 1501(a)(14). The same is true with respect to the sub-trusts. Accordingly, an Illinois income tax return is required only if the trust derives Illinois net income as defined in IITA section 202. Whether or not a trust has Illinois net income is not affected by the fact that a beneficiary is an Illinois resident.

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you have further questions regarding this GIL, please call (217) 782-7055. If you have additional questions regarding Illinois income tax laws, please visit the Department's web site at www.ILtax.com.

Sincerely,

Brian L. Stocker
Associate Counsel (Income Tax)